



HQDA Office of General Counsel

ETHICS TRAINING 2013

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Questions & Problems

Training Content:

We just write it...

For questions concerning the information presented in this training module, please contact OGC (E&F) at usarmy.pentagon.hqda-ogc.mbx.ef@mail.mil or 703-695-4296.



Technical Matters:



We have no idea how it works...

For questions or problems concerning the technical/IT aspects of this training module, including certificate printing issues, please contact the IMCEN helpdesk at _____.



Training Topics & Completion

Topics

- ***Ethical Culture***
- ***14 Principles***
- ***Conflicts of Interest***
- ***Interactions with Non-Federal Entities***
- ***Use of Government Resources***
- ***Outside Employment & Activities***
- ***Seeking/Post Government Employment***
- ***Contacts***

There are **seven topics** in this year's module.

We expect that, on average, this training should take approximately one hour. The training should be completed during normal Pentagon business hours. As noted on the previous slide, an ethics counselor will be available during that time to answer any questions you may have concerning the information contained in these training materials.

At the end of the training, OGC (E&F) will receive an automatic e-mail notifying us of the completion for our records. You will also be able to print a training certificate for your records.



Why should you get advice from an Ethics Counselor?



- You will receive “Safe harbor”
 - If an employee seeks advice before taking action, makes a full and accurate disclosure of the facts and circumstances and acts in good faith reliance upon the advice of the Ethics Counselor, administrative disciplinary action for violating the Standards of Ethical Conduct will not be taken against the employee if the ethics advice is later determined to be incorrect
- The Fine Print:
 - Ethics Attorneys always remain representatives of the Federal Government; ethics advice does not create an attorney-client relationship
 - No Safe Harbor for statutory/criminal provisions





Our Role

We are here to help you navigate the rules

...



But, ethics is more than just rules – it's a culture!



Ethical Culture

“Each of us must rededicate ourselves to upholding the principles of sound leadership. Our culture must exemplify both professional excellence and ethical judgment.” – SECDEF Memo dated 26 March 2013

- Who is responsible for the ethical culture?
 - Two-way Street: Leaders must highlight ethics issues, enforce ethics standards, and allow subordinates to raise ethics issues with them freely. Subordinates must maintain awareness of ethics standards and inform leaders about ethics issues.





Recent Headlines



Sense of entitlement behind military ethics scandals?

Tom Vanden Brook, USA TODAY 3:04p.m. EST November 14, 2012

“Some experts speculate that ethical lapses by senior military leaders stem from sense of entitlement that exists not just in the armed services.”

Panetta orders review of ethical standards amid allegations of misconduct among high-level military leaders

By Bill Briggs, NBC News contributor, November 15, 2012

“Defense Secretary Leon Panetta on Thursday ordered the Pentagon to dig into and determine why an alarming number of generals and admirals have been snared by a variety of ethical lapses and misconduct allegations...”

And, it's not just Government/Military....

Ethical Lapses Felled Long List of Company Executives

By Ashby Jones and Nathan Koppel, Wall Street Journal, Saturday, August 7, 2010

“Hewlett-Packard Co.'s Mark Hurd joins a long list of corporate leaders felled by personal ethical lapses in recent years.”

“Robert Moffat, a former senior vice president at International Business Machines Corp., left the company last year after becoming ensnared in a big insider trading case involving the hedge fund group Galleon and other corporate executives and traders on Wall Street. “

“John Browne, the former chief of oil giant BP PLC, resigned in 2007 after he admitted lying to a judge while trying to prevent a British newspaper from exposing details



Recent Headlines



Nor is it just Leadership....

Federal Bank Examiner Violated Ethics Rules by Playing Golf With Bank Employees, Probe Finds

Huffington Post 07/11/2012 9:52 am

“A federal bank examiner violated ethics rules by golfing with bank employees during work hours and letting them pick up expenses, according to a report by a government watchdog recently released under the Freedom of Information Act.”

Federal Employee Suspended for Campaigning for Obama While on Duty

By Patrick Summers, Fox News.com, August 17, 2012

“The U.S. Office of Special Counsel (OSC) announced Friday the suspensions of two federal employees for violating the Hatch Act, including one from the troubled General Services Administration (GSA) who was campaigning for President Obama from her office.”

[Employee 1 = GSA contracting officer]

[Employee 2 = Social Security Administration technology specialist.]



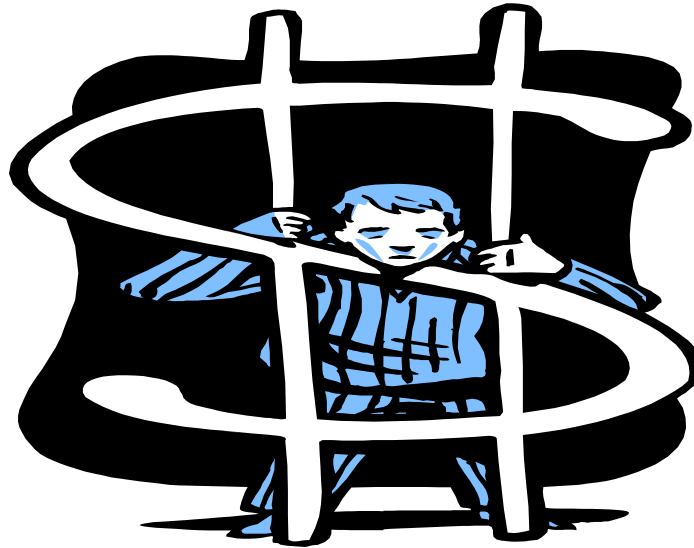
14 Principles of Ethical Conduct

Executive Order 12674

1. Place public service above private gain
2. Financial interests cannot conflict with official duties
3. Do not use non-public information for private gain
4. No gifts from prohibited sources
5. Employees must put forth honest effort in performance of duties
6. No unauthorized promises purporting to bind the government
7. Do not use public office for private gain
8. Act impartially and no preferential treatment
9. Protect and conserve government property and only use it for authorized purposes
10. No outside employment or job hunting that conflicts with Federal job
11. Obligated to disclose waste, fraud, and abuse
12. Satisfy financial obligations in good faith
13. Uphold EEO laws and regulations
14. Avoid appearance of unethical conduct/violating the law or ethics regulations



Conflicts of Interest





Conflicts of Interest

Conflicts of Interest Statute

(18 U.S.C. § 208)

- Employees may not participate **personally and substantially** through decision, approval, recommendation, advice, investigation or otherwise
 - In a judicial proceeding, application, ruling, determination, contract, claim, controversy, charge, or other **particular matter**
 - In which the employee or their spouse, minor child, partner, organization in which the employee is an officer or employee, or company with whom the employee is negotiating for employment
 - Has a financial interest
- **Particular Matter** = a matter that involves deliberation, decision or action that is focused on the interests of specific persons or a discrete and identifiable class of persons

Note: This is a criminal statute!





Conflicts of Interest

Conflict of Interest Rule “Impartiality Rule”

(5 C.F.R. § 2635.502)

Two Tests:

An employee is disqualified from participating in a particular matter where the employee:

1. knows that a matter is likely to have a direct and predictable effect on the financial interests of a member of his household

OR

2. knows that a person with whom he has a **covered relationship** is or represents a party to such matter and the circumstances would cause a reasonable person with knowledge of the relevant facts to question his impartiality



Conflicts of Interest



- An employee has a **covered relationship** with:
 - A person, other than prospective employer, with whom the employee has or seeks a business, contractual or other financial relationship (other than routine consumer transaction);
 - Members of the household and relatives with whom the employee has a close personal relationship;
 - A person for whom the employee's spouse, parent or dependent child serves as an officer, director, trustee, general partner agent, attorney, consultant, contractor or employee;
 - Former business partners, clients, and employers (within last year or last two years if received extraordinary severance payment);
 - Organizations in which the employee is an active member.



Conflicts of Interest

- **IDENTIFYING CONFLICTS:** One means of identifying potential conflicts of interest is through the OGE Form 450 (Confidential) and OGE 278 (Public) Financial Disclosure Reports, which are completed by certain designated personnel.
 - Supervisors must review for conflicts - See training at: <https://www.fdm.army.mil/supervisors.html>
 - Reviews must be conducted promptly to enable certification by ethics officials within OGE deadlines.
- **Filing Deadlines:**
 - OGE 450: 30 Days (New) / February 15 (Annual)
 - Changes in work assignment or family/financial status
 - OGE 278: 30 Days (New) / May 15 (Annual) / 30 Days (Termination)
 - OGE 278-T Periodic Transaction Reports 30 / 45 Day Rule
- **FDM:** The Army uses the Financial Disclosure Management System (FDM) to electronically complete all Financial Disclosure Reports (except 278-T).



Conflicts of Interest

- ***Financial Disclosure Report FAQs -***

- Do not need to list Government salaries/retirements.
- Give asset name AND ticker tape symbol if available.
- IRA/401k – These are merely accounts that hold investments.
 - 450 Filers - If the account holds investments required to be listed if held directly (stocks, bonds, sector funds), you must list those. If it holds investments not required to be listed if held directly (depository accounts, money markets, diversified funds), then you do not need to list the IRA/401k under Assets. (But, 401k must always be listed under Agreements.)
 - 278 Filers – You must list all assets held within the account under Assets.
- Pensions:
 - 450 Filers - Defined Benefit: don't need to list holdings – just identify as DB. Defined Contribution: must list holdings.
- If an interest might appear to be conflict (e.g. – you work in CIO/G-6 and own CISCO stock) – use the comment function to explain.
- 278 Filers: Use your tax documents (e.g. – 1099) to determine amounts/types of income. Reinvested interest/dividends and tax deferred income are still income.



Conflicts of Interest

STOCK Act

- Public Availability of OGE 278s – Online posting repealed but still publicly available!
 - Identity theft issue – all public filers should avoid including
 - PII (SSN, phone numbers, address)
 - Account numbers
 - Names of family members (use “S” and “DC”)
 - Over-reporting
- Personal Mortgage – FO/GO and PAS officials must report personal residence mortgage on Schedule C Part I (the liabilities section)
 - Other public filers – exception in 5 C.F.R. 2634.305(b)(2) – only report if generates rent
- 3-Day Employment Negotiation Notice – OGE 278 filers must submit a “notification statement” within 3 days of negotiation with any NFE for future employment OR compensation. Template is available. Must also file a recusal when there is a conflict of interest
- Periodic Transaction Reports – Effective July 3, 2012, all 278 filers shall report purchase, sale, or exchange greater than \$1000 of:
 - Stocks
 - Bonds
 - Commodities futures
 - Any other form of security

Must report for spouse, dependent child, and any security where employee is owner or partial owner. Due w/in 30 days of actual notice or 45 days of transaction.



Conflicts of Interest

- **ADDRESSING CONFLICTS:** Supervisors are responsible for promptly reviewing employees' financial disclosure for potential conflicts and determining whether corrective action is needed. Corrective actions are:
 1. Recusal/Disqualification – Provided mission/resources permit and with approval of your supervisor, you may recuse yourself from participation in the matter and your supervisor may assign the matter to another employee;
 2. Divestiture – You may sell or otherwise dispose of the conflicting financial interest;
 - If you are directed to sell you may be eligible for a Certificate of Divestiture from the Office of Government Ethics, but you must request it **before** the sale. Contact your ethics counsel for details.
 3. Waiver – In rare circumstances, you may be authorized continued participation. Before granted, all other remedies should be examined and determined inadequate or inappropriate. Requires DAEO recommendation and approval by the appointing official.
- **De Minimis Exceptions:** Permit employees to continue to hold certain conflicting financial interests valued below a stated threshold. (5 C.F.R. § 2640.201, et. Seq.)



Conflicts of Interest

Reflection:

Employees must maintain integrity and impartiality in the performance of their duties. Yet, employees, as citizens, should be able to invest in the financial market. So, the rules must balance the need for impartiality and public trust against the rights of the individual employee.

SCENARIO: Your mother thought it would never happen, but after years of focusing on your career (and hanging with the guys), you finally found and married Mrs. Right! The best part is you have lots in common since she previously worked for a major defense systems provider, whose projects you oversee. Of course, you must now report her assets on your financial disclosure report and when you do so, you realize she still has stock interests in the company worth well over \$50,000.

QUESTION: What are your options?

Please choose the best answer:

1. Annulment – that way you were never married and the conflict never existed...
2. Talk to your supervisor to determine if any actual or potential conflicts with your duties exist, and if so, contact ethics counsel to work out a way ahead.
3. Tell your wife she must get rid of her stock interests immediately!



Conflicts of Interest

Number 2
--Correct

DISCUSSION: Employees may not participate personally and substantially in a “particular matter” that directly and predictably affects their financial interests, or those of a spouse or minor child. Financial Disclosure Reports are one means to identify potential conflicts and avoid inadvertent violations. Your supervisor is in the best position to determine whether a conflict exists because they are the most familiar with your specific duties. Likewise, they have the “big picture” concerning workload and resources and may be able to identify a way to allocate assignments in a manner that will avoid potential conflicts. They can also contact ethics counsel to assist in identifying whether there is a solution that will work for both the Government and the employee. If not, divestiture of the asset (not necessarily the wife!) may be necessary.





Interaction With Non-Federal Entities





Interaction With Non-Federal Entities



- ***Support:***

- Per JER 3-211a. - DoD personnel may, in their official capacities, discuss DoD policies as speakers, panel members or participants at a conference, seminar or similar event sponsored by a non-Federal entity (NFE). Requires organization head (or designee) to determine:
 1. The support doesn't interfere w/ official duties/detract from readiness;
 2. DoD community relations and/or other legitimate DoD public affairs or military training interests are served;
 3. It is appropriate to associate DoD with the event;
 4. The event is of interest/benefit to the local civilian community or DoD;
 5. The DoD organization is able and willing to provide the same support to comparable events;
 6. The use is not restricted by other statutes; and (see next slide)
 7. Either no admission fee (beyond what will cover reasonable costs of sponsoring the event) is charged for the event, or DoD support to the event is incidental.
 - Except for events held in locations with higher per diem rates than D.C., reasonable costs are currently set at \$675 per day and support is "incidental" if DoD personnel represent less than



Interaction With Non-Federal Entities



- ***Payment of Travel Expenses:***

- An outside entity may indicate that it is willing to pay for the employee's travel expenses. 31 U.S.C. § 1353 provides for acceptance of unsolicited payment of travel expenses as a gift to the Government under certain conditions. Travel and the gift must be approved in advance and in writing by the travel approving authority and the appropriate ethics official.

- ***Endorsement:*** Don't forget about endorsement issues – Avoid appearing as though you are endorsing the NFE.
 - JER 3-209 provides that DoD employees may use or allow the use of their titles, positions, or organization names in conjunction with their own names only to identify themselves in the performance of their official duties.



Interaction With Non-Federal Entities



GIFTS FROM PROHIBITED SOURCES or GIVEN BECAUSE OF OFFICIAL POSITION:

- **General Rule:** Employees shall not solicit or accept a gift or other item of monetary value from any person or entity seeking official action from, doing business with, or conducting activities regulated by the employee's agency, or whose interests may be substantially affected by the performance or nonperformance of the employee's duties.
- **Definition:** A "gift" may be any tangible or intangible item of value, such as: Cash, service, entertainment, housing, travel or travel-related expenses; discount, loan, or forbearance.
- **Exclusions:**
 - Greeting cards & plaques
 - Refreshments served as other than part of a meal (Coffee, donuts, etc.)
 - Benefits/discounts available to the public, Government employees, or all military
 - Gifts to the Government
 - Anything paid for by the Government under a contract.





Interaction With Non-Federal Entities

GIFTS FROM PROHIBITED SOURCES or GIVEN BECAUSE OF OFFICIAL POSITION:

- ***Exceptions: Most Common -***

1. Gifts of \$20 or Less. Unsolicited gifts with a market value of \$20 or less per source, per occasion, so long as the total value of all gifts received from a single source during a calendar year does not exceed \$50.

2. Gifts Based on a Personal Relationship.

3. Speaking Engagements

- On the day of participation
- Can include conference fees, food, instructions & materials, to the event.

4. Widely Attended Gatherings (WAGs)

- Large number of attendees
- Diverse viewpoints
- Opportunity to exchange ideas
- Supervisor or agency designee determination required finding attendance will further agency interests
 - Ethics counsel can serve as agency designee for high level officials or blanket determinations
 - Supervisor determinations require consultation with ethics counsel
- Attendance is in personal capacity & value may need to be reported on Financial Disclosure Report.





Interaction With Non-Federal Entities

ETHICS PLEDGE - LOBBYIST GIFT BAN: ***(Political Appointees)***

- ***Rule:*** Cannot accept a gift from a lobbyist or lobbying organization even if the gift is not given because of your official position or from a prohibited source.
- ***Exceptions*** – You may accept the following:
 - Gifts based on a personal relationship
 - Discounts and similar benefits
 - Gifts resulting from a spouse's employment or business
 - Gift of travel offered to the Army for official travel
- ***Not exceptions*** – Unless the donor is a 501(c)(3), you may not accept:
 - Gifts using the \$20/\$50 gift exception
 - Widely attended gatherings
 - Awards/honorary degrees
 - Gifts related to your own outside employment
 - Gifts from political organizations in connection with political participation.



Interaction With Non-Federal Entities

Reflection: While the Government has an interest in disseminating its message to appropriate audiences, the Government shouldn't be using taxpayer dollars to provide free "attractions" for which a private entity charges and earns considerable profits.

Scenario: The Organization for Military Greening (OMG), a non-profit group, has invited you to present information concerning the Army's renewable energy goals at their annual conference in Las Vegas. Their brochure advertises that this event will provide attendees with first-hand information from experts across DoD. The two day conference costs \$1200 for Government and \$1499 for Industry, with a \$100 late registration fee.

Question: May you speak at the OMG conference? What kinds of considerations may come into play here?

Please choose the best answer:

- 1) Of course! Who in their right mind would turn down a Government paid trip to Vegas???
- 2) No, this is clearly a boondoggle of epic proportions.
- 3) Maybe - but it requires an assessment of Agency interest the ethics rules associated with support to



Interaction With Non-Federal Entities

Correct!

Discussion: Maybe. While most of the findings required by JER 3-211a. for support to non-federal entities would be met by this conference (mission support, alignment with DoD goals, etc.), the rules also require that the Army be willing to provide support to comparable events, which may not be feasible. And, the fees charged exceed the \$645 per day limitation. It also appears that the support would not be incidental since the brochure implies that the speakers providing information at this event are all DoD personnel. You should also consider public perception issues associated with participation at events held in locations with high tourist value such as Vegas, Orlando, etc. And, of course, travel and conference attendance policies must be complied with as well.





Use of Government Resources





Use of Government Resources



GENERAL RULE: Generally, you may not use government property, including official time, for other than authorized purposes. You may not use the time of a subordinate for other than official duties, unless authorized by statute or regulation.

Exception: However, subject to supervisor approval, you may use Government resources for personal purposes **IF** it is approved by your agency **and** the use:

1. Does not adversely affect the performance of official duties;
2. Is of reasonable duration and frequency;
3. Serves a legitimate public interest (such as keeping the employee at their desk);
4. Does not reflect adversely on DoD; and
5. Creates minimal or no significant additional cost to DoD.

WARNING: You should also check Army and other regulations applicable to particular categories of resources²⁹ (e.g. – JTR/JFTR, IT regulations, etc.). Even though personal



Use of Government Resources

**Use Your
Common
Sense!**

***If you wouldn't
want to see it
splattered on
the front page
of the
newspaper
with your name
and picture
next to it,
don't send it in
an e-mail!***

Common Sense Considerations:

- Internet – Can be used for short internet searches to permissible sites
 - Remember, the use –
 - must not reflect poorly on the Department, so no gambling, “adult,” or controversial websites!
 - can't unduly burden the system, so no unauthorized audio/video streaming!
- E-mail – Can be used for short personal e-mails
 - No right of privacy - even in personal e-mails
 - **NO** – potentially offensive material, improper jokes, political material, “adult” content.



Use of Government Resources

Use Your Common Sense!

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Common Sense Considerations:

- Telephone – Can be used for short personal local calls. But, no long distance calls – use a calling card or personal cell phone.
- Commercial Activities – You may not use Government equipment/systems to perform outside work even on your own time. Outside work includes any selling, personal profit making venture, fundraising, charity work, etc.

Remember – Your time during duty hours is a Government resource as well - No spending undue Government time on personal matters!



Use of Government Resources

- ***GOVs may only be used for “official purposes.”***
 - ***TDY :***
 - ***Rental cars on TDY are limited to official use!***
 - ***Use of a GOV for reasonable sustenance, health or comfort while TDY is considered travel for official purposes.***
 - ***Home:***
 - ***No home to work or commuting use, except in certain limited circumstances.***
 - ***Event Attendance:***
 - ***May be used to attend in official capacity***
 - ***May NOT be used to attend in personal capacity (e.g. - WAGs)***

Because you don't want to have to explain why the car was where it was when this happens



Use of Government Resources





Use of Government Resources



Or this....





Use of Government Resources

Reflection:

As a taxpayer, would you be offended to know that the equipment and systems paid for with your tax dollars are being used to get out the Idol vote?

SCENARIO: Your nephew is one of the youngest contestants on American Idol and stands to win a million dollar recording contract! It is down to the top 5 and the votes have been pretty close the last couple of weeks. You and your sister are brainstorming on how to drum up votes when you realize that you work in a building with over 40,000 employees! So, you decide to send an e-mail to the workforce letting them know how great your nephew is and the adversity he has overcome in his young life to get to the top 5 Idol contestants. You also include a clip of one of his performances (which takes some doing given the file size!)

QUESTION: Is this permissible?

Please choose the best answer:

1. Yes, since e-mail doesn't cost anything.
2. Sure, this will make a great PR story for the Army when your nephew wins – the show is patriotically called *American Idol* after all!
3. No, this serves no DoD interest and unduly burdens



Use of Government Resources

Correct!

DISCUSSION: You may use Government resources for personal purposes **IF** it is approved by your agency **and** the use: (1) Does not adversely affect the performance of official duties; (2) Is of reasonable duration and frequency; (3) ***Serves a legitimate public interest (such as keeping the employee at their desk);*** (4) Does not reflect adversely on DoD; and (5) ***Creates minimal or no significant additional cost to DoD.***

No legitimate public interest is served in using the Government e-mail to solicit Idol votes for a family member. In fact, this also creates a potential violation of the fundraising/profit making rules since the purpose is to assist the family member in winning money/prizes. Additionally, the file size and broad dissemination unduly burden the system, which may actually result in significant costs to





Outside Employment & Activities





Outside Employment & Activities



Moonlighting: 2nd Federal Job

Active Duty Military Personnel

- May not accept pay for a second federal government position.
- Exception: transition (terminal) leave

Civilian Personnel

- Can accept pay for a second federal government position.

Federal Retirement and similar payments not considered payment for a second government position for these purposes.



Outside Employment & Activities



Moonlighting: Private Sector

Official Capacity

- **Prohibited!**
 - Only Federal Govt. can pay you for doing your job.
- **But, see teaching / speaking / writing analysis in this section.**

Personal Capacity

- **Permitted!**
 - With limitations...
- **Subject to rules described on next slide**
...

NOTE: PAS Officials are generally barred by SASC and White House policy from participating in outside employment and certain non-career employees are subject to limits on the amount of outside income they may earn.



Outside Employment & Activities



Employment

- **General Rule:** Subject to certain restrictions, you generally may engage in outside compensated employment, so long as you are not being paid to do what the Federal Government already pays you to do.
- **Restrictions:**
 - **Criminal Rules:**
 - Conflict of Interest – 18 U.S.C. 208 (Employment prohibited if would require disqualification from matters critical to the office)
 - Employees may not receive compensation for representational services against the United States provided by another – 18 U.S.C. 203
 - Only the Federal Government can pay you for doing your Federal Job – 18 U.S.C. 209
 - No interference with duties or violation of statutory/regulatory prohibitions
 - **Prior Supervisor Approval:** Required in writing for financial disclosure filers working for a prohibited source. (Even on transition leave)



Outside Employment & Activities

- **General Rule:** In their personal capacity, Federal personnel may, under certain conditions:
 - teach
 - engage in public speaking
 - and write scholarly articles
- **Limitations & Prohibitions:**
 - Financial Disclosure filers must obtain advance written approval from their supervisor before engaging in a business activity or outside employment with a prohibited source.
 - You MAY NOT accept compensation from any non-Federal source for performing your Federal duties (your job). 18 U.S.C. § 209.
 - You MAY NOT take any official action that has a direct and predictable effect upon your financial interests (including the interests of an entity which has offered to compensate you for TSW). 18 U.S.C. § 208.
 - You MAY NOT accept compensation for TSW that relates to your DoD duties. 5 C.F.R. § 2635.807.



Outside Employment & Activities

Teaching, Speaking, Writing (TSW)

- **TSW relates to your DoD duties if:**
 - It is undertaken as part of your duties;
 - The opportunity is offered PRIMARILY because of your position, not your subject matter expertise;
 - The offeror's interests may be affected substantially by performance or nonperformance of your job;
 - The information you will present "draws substantially" on ideas/data that are nonpublic information; *or*
 - The TSW subject matter deals "in significant part" with:
 - Matters to which you are assigned/ were assigned, during the previous year;
 - Ongoing or announced DoD policies, programs, or operations.
- **Ask:**
 - Am I being offered compensation for my TSW?
 - Is the TSW "related" to my Federal job?
 - What prior approvals and clearances are required?



Outside Employment & Activities

- **Some Additional Rules:**
 - **Disclaimer:** Where you use your military or civilian grade, title, or position as one of several biographical details given to identify yourself in connection with TSW, you need to publish a disclaimer IF:
 - The subject deals in significant part with any ongoing or announced policy, program or operation of your DoD Agency; and
 - You have not been authorized by appropriate Agency authority to present that material as the Agency's position.
 - An appropriate disclaimer states that these are the speaker's/author's personal views and not necessarily those of the Department or Federal Government.
 - **Security Reviews:** A public affairs and security review is required if the speech or writing pertains to military matters, national security issues or subjects of significant concern to DoD consistent with JER 3-305b. and DoD Instruction 5230.29.



Outside Employment & Activities

Reflection:

The law must balance the employee's right to freedom of expression against the need to protect non-public information and avoid conflicts of interest and even the appearance of impropriety.

Scenario: Barry has been a part of the Army's civil works programs for years and is heavily involved in water projects. He has been offered \$200 to write an article for a major environmental magazine concerning the Army's ability to continue supporting these projects given sequestration.

Question: Can Barry accept the offer?

Please choose the best answer:

1. Yes – who else knows enough about this topic to educate the public?
2. No, because the topic relates to his official duties with DoD.
3. Yes, but he has to split the money with his ethics₄₄ official.



Outside Employment & Activities

Correct!

DISCUSSION: Federal law and regulations permit Federal personnel to teach, speak and write outside of the Government. However, there are limitations, one of which is that employees may not be compensated for teaching, speaking or writing that relates to their official duties. Here, Barry has been offered compensation to write an article that specifically relates to his duties with the Army. Therefore, under 5 C.F.R. § 2635.807, he cannot accept.





Seeking Employment and Post-Government Employment





Seeking Post-Government Employment

- **General Rule:** When seeking non-Federal employment, employees **MUST**:
 - Disqualify from official participation
 - In any particular matter
 - That has a direct and predictable effect on the financial interests
 - Of entities with whom the employee is discussing future employment.

Disqualifications must be in writing and delivered to, at a minimum, your supervisor and to ethics counsel.

VIOLATIONS CAN BE PROSECUTED.



Seeking Post-Government Employment

Reporting non-Federal employment contacts:

- Employees who are personally and substantially involved an acquisition over the simplified acquisition threshold (currently \$150,000 for most acquisitions) must
 - Report employment **contacts** with bidders or offerors
 - Contact = communication about prospective employment
 - Report must be in writing
 - Report to supervisor and an ethics counselor
 - Disqualify from future participation in the matter, unless the contact is immediately rejected.
- OGE 278 filers - STOCK Act requires you to provide written notice to your ethics counselor within 3 days of negotiating for employment, and if necessary, a written recusal. A template is available.



Post-Government Employment



Representational Bans

(18 U.S.C. § 207)

- Permanent (“Lifetime”) Ban: Bars all former employees from representing another before any Federal agency or court regarding particular matters involving specific parties in which they participated personally and substantially at anytime during Federal service. “Lifetime” means the lifetime of the particular matter (e.g. contract).
- 2-Year Ban: Bars all former employees from representing before any Federal agency or court regarding particular matters involving specific parties that were under their official responsibility during their last year of Federal employment.
- 1-Year Cooling Off: Bars “Senior Employees” for one year after leaving a senior position from representing another before their former agency to seek official action. This is **2 years** for political appointees of the Obama Administration.



Post-Government Employment



Procurement Related Restrictions

- One year ban on receipt of compensation from \$10M prime contractor if the former employee did any of the following on that contract:
 - Served as a procuring contract officer, source selection authority, member of a source selection evaluation board, or chief financial or technical evaluation team;
 - Served as a program manager, deputy program manager, or administrative contracting officer;
 - Personally made decisions in excess of \$10M to award contracts, subcontracts, or modifications, task or delivery orders; to establish overhead or other rates; to approve contract payment or payments; or to settle claims
- 2008 NDAA § 847: Covered DoD officials must request written post-employment advice if engaging in compensated employment with a DoD contractor within **two years** of leaving government. DoD contractors may not pay these officials until 30 days following the request for an ethics opinion or the date the opinion is received, whichever occurs first.
 - Covered officials:
 - SES & GO/FO who participated personally and substantially in an acquisition in excess of \$10 million; or
 - Employees in one of the following positions: program manager or deputy, procuring contracting officer, administrative contracting officer, source selection authority, member of a source selection evaluation board or chief of a financial or technical evaluation team for a contract in excess of \$10 million.



Post-Government Employment

Reflection:

The public has a right to expect that a Federal employee's decisions and advice reflect the best interests of the government - not the employee's personal interests.

Thus, ethics laws require disqualification where there is a conflict of interest. In DoD, written disqualification must be made to the

SCENARIO: You provide advice and recommendations to the CO concerning a multi-million dollar IT project. You regularly participate in meetings with the contractor on this project and have casually mentioned your approaching retirement eligibility to the company's VP, not with any intent to seek employment, but just as part of the normal small talk during breaks, etc. So, you are pleasantly surprised when he calls you to express interest in hiring you when you retire. You let him know that you would like to hear more and set up a meeting at their offices.

QUESTION: May you do this and still work on the project?

Please choose the best answer:

1. Yes, because you don't want anyone to know you are considering retirement until you have a job locked down.
2. No, you must disqualify yourself.
3. Yes, because it's not like the CO ever listens to you anyway.



Post-Government Employment

Number 2
--Correct !!

DISCUSSION:

DoD personnel who are seeking employment or who have an arrangement concerning prospective employment must disqualify themselves from participating in any particular matter that would have a direct and predictable effect on the financial interests of that prospective employer. That disqualification must be in writing and must be followed by not participating in the matter in any way, including attending meetings and directing subordinates relating to the matter.

Remember, these are complicated criminal restrictions – SO –contact ethics counsel for advice before you act – we are here





Contact OGC (E&F)

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John Kent (Ethics & Conferences)

- Support to Non-Federal Entities
- Fundraising & CFC
- Outside Activities
(Teaching, Speaking, Writing)
- Official Speaking
- Conferences
- AUSA

Dani Irvine (Ethics)

- Training
- STOCK Act
- Transition
- Conflicts of Interest
- Financial Disclosure
- CASA Program
- Seeking/Post Employment

Susan Sutherland (Ethics & Fiscal)

- Travel
- GO Nominations
- Contractor Issues
- FACA s (ASB & ANCAC)
- Political Activities
- Gifts & Free Event Attendance
- Gifts to the Army
- Foreign Governments

Kim Hintz (Financial Disclosure Mgmt System)

- Electronic filing of SF 278 and OGE 450

OTJAG

Art Kaff and MAJ Colin Cusack

(OTJAG Ethics)

- All ethics matters for HQDA ARSTAF⁵³
- Call 571 256 2007



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